

22
01.05.2023
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 6461 of 2021

**Md. Hashim
-versus
The State of West Bengal & Ors.**

**Mr. Shaham Shah,
Mr. Sk. Abumusa.
...For the Petitioner.**

**Mr. Dwarika Nath Mukherjee,
Mr. Manik Lal De.
...For the State.**

**Mr. Pinaki Kumar Mitra,
Ms. Pallavi Pain.
...For the Respondent
Nos. 8 and 9.**

Leave is granted to the learned advocate appearing for the petitioner to implead the Executive Engineer, Solid Waste Management, Borough V, KMC as party respondent.

The petitioner complains of illegal and unauthorized construction on the footpath in front of the petitioner's premises at the instance of the respondent nos. 8 and 9.

The petitioner submits that the unauthorized construction has been made without obtaining any sanction from the Corporation and the private

respondents are running a shop room from the said construction.

Learned advocate appearing for the private respondents submits, upon instructions, that the private respondents are very poor and the shop room is the only place for earning their livelihood.

Learned advocate appearing for the private respondents has produced photographs to show the nature of the construction made.

It appears therefrom that the construction has been made out of bricks and the roof is covered by bamboo and tarpaulin sheet.

Learned advocate appearing for the private respondents admits that a shop is running from the said construction.

Financial condition of the private respondents does not give them any license to raise any construction not permitted in law.

As it appears that the representation of the petitioner objecting to the illegal and unauthorized construction is pending consideration at the end of the respondent authorities, no useful purpose will be served by keeping the writ petition pending.

The writ petition is accordingly disposed of by directing the respondent no.5 and the added respondent i.e. the Executive Engineer, Solid Waste Management Department, Borough V to consider and dispose of the representation made by the petitioner strictly in accordance with law, after giving an

opportunity of hearing to all the necessary parties including the petitioner within a period of three months from the date of communication of a copy of this order. The said respondent shall pass a reasoned order and communicate the same to all the necessary parties including the petitioner immediately thereafter.

In the event the aforesaid respondent is of the considered opinion that the construction has been made either in violation of the plan sanctioned or devoid the sanction plan, then necessary steps shall be taken to deal with such unauthorized construction, in accordance with law.

It is made clear that this Court has not entered into the merits of the claim made by the petitioner and all points are left open to be decided by the aforesaid respondent at the time of consideration of the representation of the petitioner.

The petitioner is directed to forward a copy of the legal representation annexed at pages 18 to 22 of the writ petition to the aforesaid respondent at the time of communicating the order of the Court.

Photographs handed over by the learned advocate appearing for the private respondents be retained with the records.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)